

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA, )  
4 )  
5 Plaintiff, )  
6 vs. ) NO: 14-CV-1025 RB-SMV  
7 )  
8 THE CITY OF ALBUQUERQUE, )  
9 )  
Defendant. )

10 TRANSCRIPT OF PROCEEDINGS  
11 TELEPHONIC STATUS CONFERENCE  
12 BEFORE THE HONORABLE ROBERT C. BRACK  
UNITED STATES DISTRICT JUDGE  
13 THURSDAY, JULY 12, 2018  
11:14 A.M.  
LAS CRUCES, DOÑA ANA COUNTY, NEW MEXICO

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21 (Proceedings recorded by machine shorthand and  
transcript produced by Computer-Aided Transcription.)

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30 HONORABLE LORENZO F. GARCIA, RET.

31 DIONNA K. FORD, Law clerk

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1 (In Open Court at 11:14 A.M.)

2 THE COURT: Good morning, this is the *United*  
3 *States of America versus City of Albuquerque*. Our monthly  
4 status conference.

5 Representing the City of Albuquerque this  
6 morning, appearing telephonically, are Mr. Aguilar,  
7 Ms. Hults, Mr. Schmehl, and Ms. Van Meter. Representing the  
8 Government is Ms. Martinez and Mr. Ryals. And representing  
9 the APOA is Mr. Mowrer. Is anybody else -- oh, and Judge  
10 Garcia is on the line as well.

11 HON. LORENZO GARCIA: Yes. Good morning, Judge  
12 Brack.

13 THE COURT: Good morning.

14 Good morning to you all. We're set for our July  
15 status conference and I have a proposed agenda for the  
16 conference from the parties. And let's begin with Number 1.

17 Mr. Aguilar, you wanted to introduce a new member  
18 of your team?

19 MR. AGUILAR: Yes, thank you, Judge.

20 Your Honor, and everyone, this is Mr. Aguilar.  
21 It's my pleasure to introduce Lindsay Van Meter to the team.  
22 I'll let her give a brief introduction of herself, but  
23 needless to say, we are thrilled to have her join this  
24 effort. So I'll turn it over to Lindsay.

25 MS. VAN METER: Good morning, Your Honor and

1 Counsel. I'm happy to join this team and be a part of this  
2 process. My -- I have four years of clerking experience at  
3 the New Mexico Court of Appeals, four years of private  
4 practice and then six years clerking for Judge Armijo. I'm  
5 happy to join the team.

6 THE COURT: Well, welcome, Ms. Van Meter. I'm  
7 glad to have you on board.

8 The second item is the -- well, relating to the  
9 promotional policy that we have -- the City's motion and the  
10 APOA response were set for an oral argument on Monday --  
11 next Monday, I guess -- no, it's two weeks, I guess. Monday  
12 the 23<sup>rd</sup>, at 1:00. And we're -- I've agreed to allow  
13 counsel to appear telephonically. I'm willing to do that  
14 for hearings that don't extend longer than 30 minutes;  
15 otherwise, sometimes it's hard to make a record, but the  
16 parties have indicated that they can keep it within 30.

17 Ms. Hults and Mr. Mowrer?

18 MS. HULTS: Morning, Your Honor. This is  
19 Samantha Hults for the city.

20 Yes, the parties have discussed this, and we  
21 appreciate the Court assisting us in coming to a  
22 determination on this matter. We believe that 30 minutes is  
23 sufficient between myself and Mr. Mowrer. As the DOJ  
24 indicated, they did not participate in the briefing and  
25 don't expect to have an oral argument, so 30 minutes should

1 be enough time.

2 MR. MOWRER: This is Fred Mowrer, Your Honor, and  
3 I concur.

4 THE COURT: Good enough. Well, I'll talk with  
5 you all Monday the 23<sup>rd</sup> at 1:00 P.M. Call the same  
6 number, I guess, that you called today.

7 Is that right, Jess?

8 COURT CLERK: We'll send a Meet Me Line number.

9 THE COURT: Jessica will send a Meet Me Line  
10 number to you between now and the 23<sup>rd</sup>.

11 MS. HULTS: Thank you, Your Honor.

12 THE COURT: Of course. Thank you, Mr. Mowrer and  
13 Ms. Hults.

14 Number 3 is update on the APD Internal Affairs  
15 report regarding use-of-force investigation backlog. This  
16 indicates that Cdr. Middleton is going to take up that item.  
17 Is he on the line?

18 CDR. MIDDLETON: Yes, sir.

19 THE COURT: Commander.

20 CDR. MIDDLETON: So we developed something in  
21 Internal Affairs Force Division, and it's the title sheet  
22 for the entire backlog, it's the Project Status Report. We  
23 just updated it this morning. And I believe Jeramy Schmehl  
24 is going to e-mail that out so you can have a visual of what  
25 this looks like, but from the update this morning, we have

1 the entire backlog listing that it represents.

2 So in the columns, you'll see we have our  
3 starting total of 214 use-of-force cases and 101  
4 show-of-force cases and 26 serious use-of-force cases. And  
5 just for the visual and so everybody can see this, we have  
6 the cases at a detective level. Right now we have 13 cases  
7 that are issued to detectives that they're currently  
8 investigating. Fifteen cases right now are at the sergeant  
9 level, and those should be closed out very soon. We have  
10 three cases that we've looked at that are within policy, and  
11 they agreed with the original findings. One case was closed  
12 out of policy. And that's one of the most important things  
13 and I think everybody is most interested in is how many  
14 cases are we closing out that we disagree with the original  
15 findings. We're going to keep track of that.

16 We're also following the advice of Dr. Ginger.  
17 And he requested that we report on the amount of time it  
18 takes. I reported to him yesterday that it takes -- of  
19 these cases that we've investigated so far, the minimum  
20 amount of time is 14 hours that it took for one case and the  
21 max was 40 hours. So we created a mean time that will be  
22 listed on every one of these. And it represents the time  
23 spent on reports, videos, data collection, narrative, and  
24 the total time.

25 So once we get about 20 of these cases done,

1 we'll be able to project out how long this will take. And  
2 then I'll also be updating a staffing proposal to the  
3 executive staff to let them know we either do have enough  
4 staffing or we might need more to close that out within the  
5 time limits.

6 One of the interesting things that we found was  
7 doing a round table of the backlog review process. And what  
8 everybody has realized now, the detectives doing this, the  
9 sergeants, me, Jeramy, everybody, is that each one of these  
10 cases is a case study. And this case study is going into  
11 great depths with each officer. And it's very similar to  
12 developing -- to something that's already been investigated  
13 and now these reviewers are looking at it to -- at the --  
14 not only the officer's level, but the sergeant's, the  
15 lieutenant's, the commander's, all the way through to  
16 completion with us. And we're using -- we're developing and  
17 collecting trends from this to make sure that we do it right  
18 in the future.

19 I'll just kind of cut it off there, unless you  
20 have questions.

21 THE COURT: Thank you, Commander.

22 And anyone from the Council or DOJ want to  
23 respond or weigh in on this?

24 MS. MARTINEZ: Your Honor, if I may, Elizabeth  
25 Martinez. You should be aware that Cdr. Middleton is making

1 a presentation to the monitor and the parties every week on  
2 the backlog, so he is keeping us very fully informed on  
3 this. We are getting a -- the report that he referred to,  
4 it's a physical report, every week. This is a very, very  
5 thorough, conscientious effort that he and his staff are  
6 undertaking. And as he indicated, it is a learning process  
7 that they are using in a very conscientious way, not only as  
8 they deal with the backlog, but also as they think about  
9 training and as they think about putting together a training  
10 at the Academy.

11 I believe that Cdr. Middleton indicated that he  
12 is going to have Mr. Schmehl submit that report to the  
13 Court. If so, I'd request that it be identified as  
14 Exhibit 1. We will be ordering the transcript of this  
15 status conference, as we do, so that we can make it  
16 available to the amici and the stakeholders, and we would  
17 like to make sure we include that as a part of the  
18 transcript. Thank you, Judge.

19 (Discussion off the record.)

20 THE COURT: So my court reporter just indicated  
21 we don't maintain exhibits; you do. But I'm glad for you  
22 to -- I guess, without objection, make that -- make that an  
23 exhibit to this status conference. And it won't be a part  
24 of the transcript, we won't have it here, but it will be  
25 available for folks that you're disseminating copies of the

1 transcripts to. You just send it along with them.

2 MS. MARTINEZ: Judge, then, perhaps what we can  
3 do is, as you know, in the past, when we have had exhibits  
4 to public hearings, we have submitted a pleading that makes  
5 the exhibits a part of the formal record.

6 THE COURT: Yes, ma'am, that's fine.

7 MS. MARTINEZ: Perhaps we can do it that way.

8 THE COURT: That would be great.

9 MS. MARTINEZ: Thank you, Judge.

10 THE COURT: Anyone from the City want to be, or  
11 Mr. Mowrer, want to be heard on this Cdr. Middleton report?

12 MR. MOWRER: This is Fred Mowrer, Your Honor.

13 No, thank you.

14 THE COURT: All right.

15 MR. SCHMEHL: Nothing more from the City, either,  
16 Your Honor.

17 THE COURT: Let's look at Number 4, then, update  
18 on the CASA paragraph 298, Outcomes Assessment Report. And  
19 I guess the draft was distributed to the parties for  
20 comments on July 1<sup>st</sup>. Comments are due on the 15th to --  
21 due to the monitor on the 15th with a report to be filed on  
22 August 1<sup>st</sup>.

23 And Dr. Ginger, I guess, is on vacation today.

24 Ms. Martinez?

25 MS. MARTINEZ: Judge, we just wanted to make sure

1 you were aware that things are proceeding apace and that we  
2 fully expect that the report will be filed timely, as  
3 expected.

4 THE COURT: That's good news. I appreciate that.

5 Mr. Schmehl?

6 MR. SCHMEHL: Good morning, Your Honor. The City  
7 has had some internal discussions and anticipates getting  
8 the comments back to the monitor tomorrow.

9 THE COURT: Sounds great. Shouldn't be any  
10 problem meeting the August 1<sup>st</sup> report date. I appreciate  
11 that. And glad to have that done.

12 Number 5 is an update on the implementation of  
13 the Compliance Plan under the joint stipulation suspending  
14 the CASA paragraph 308.

15 Mr. Schmehl?

16 MR. SCHMEHL: Yes, Your Honor. As has been the  
17 case in past status conferences, I'll pass this off as soon  
18 as I received it [sic] to Lt. Lowe to update the Court on  
19 the Compliance Plan.

20 LT. LOWE: Good morning, Judge. I wanted to give  
21 a quick update on the Compliance Plan from the last status  
22 hearing. So out of the -- after the last status hearing, we  
23 requested to amend a couple of the deadlines out to this  
24 next second status time frame to ensure that we were able to  
25 meet the tasks at hand. So from June 1<sup>st</sup> through

1       July 31<sup>st</sup> of 2018, there are 13 new cases pending for APD  
2       to complete. Of those, there's only three that deadlines  
3       have come and passed. And all three of those tasks have  
4       been completed to date; therefore, we're 100 percent for  
5       right now. But also keep in mind that there are two tasks  
6       that are incomplete from the first one, and that is just  
7       pending the hiring process for our video review and getting  
8       units for both IA Force and then Compliance and get them  
9       trained.

10                   So to date, there's 83 tasks that have come to  
11       pass. And 70 out of those 83 have been completed on or  
12       before the deadline date, which is 83.34 percent. There's  
13       been 12.05, or 10 out of 83 tasks that have been completed;  
14       however, that was after the original deadline. And again,  
15       there are a couple that -- 3.61 that are not completed as of  
16       to date, but we're just waiting for the hiring process. We  
17       will complete the rest of them by July 31<sup>st</sup>, pending any  
18       circumstances that keep us from doing so.

19                   That's all I have for the Compliance Plan, if  
20       there's any questions for that.

21                   THE COURT: Any questions for Lt. Lowe? None  
22       from me, Lieutenant.

23                   Chief Garcia, did you have -- want to weigh in?

24                   D.C. GARCIA: Good afternoon, Your Honor. This  
25       is Deputy Chief Garcia. I just wanted to talk about the

1 schedule for amici meetings we have scheduled for next week,  
2 our next round of the meetings for all the stakeholders will  
3 begin on July 16<sup>th</sup> and they will go through July 18<sup>th</sup>. As  
4 of right now, five of the six meetings have been set. We're  
5 just waiting to hear back from the McClendon subclass.

6 THE COURT: All right. And I see the schedule  
7 laid out here in my proposed agenda and pleased that those  
8 are being done -- well, as quickly and, I guess, over a  
9 period of three days. It looks like you-all are going to  
10 have a busy couple of days. As if you weren't busy all the  
11 time.

12 Anything else on the update or the schedule of  
13 stakeholders?

14 MS. MARTINEZ: Judge, Elizabeth Martinez. I just  
15 want to let the Court know that D.C. Garcia and Lt. Lowe are  
16 following through on their commitment to meet with the amici  
17 and stakeholders every six weeks, so they are being very  
18 conscientious about making sure that they are updating these  
19 folks regularly. And these are substantive updates.  
20 They're very, very thorough updates and they are very, very  
21 much appreciated by the amici and the stakeholders.

22 THE COURT: Well, I appreciate the -- and I'm  
23 sure they do -- appreciate the words of encouragement there.

24 Number 6 is the update on Use of Force Suite.

25 Mr. Schmehl?

1                   MR. SCHMEHL: Yes, Your Honor. Thank you. So  
2 this agenda item is just an update to you -- to the Court  
3 and the community on how things are going with the  
4 reformatting and really redefinition of these policies.  
5 Standard Operating Procedure 2-52, which is the General  
6 Use-of-Force Policy, was approved yesterday by the policy --  
7 by the PRB, the Policy Procedure Review Board. And the next  
8 step will be the Police Oversight Board for their 30-day  
9 period of review and comment. And then the process  
10 anticipated by paragraphs 147 and 148 would begin at that  
11 15-day mark.

12                   The next one is 2-53, which is definitions  
13 surrounding the use of force. That was presented this  
14 morning at 10:00 A.M. before the Office of Policy Analysis  
15 by Cdr. Middleton. And the next step for that won't be --  
16 will be to be posted on Priority DMS for a period of review  
17 by sworn personnel. And that will be a seven-day period.

18                   2-54, which is the Intermediate Weapon Policy was  
19 discussed this past Monday. And before that meeting, very  
20 short in time before that meeting, the City provided a  
21 revision based upon comments from the monitor and parties.  
22 So given that short -- short notice period, we are giving  
23 additional time to provide comments. And that will be till  
24 2:00 tomorrow. And that is on 2-54, which is the  
25 Intermediate Weapons Policy.

1 Standard Operating Procedure 2-55, which is the  
2 de-escalation policy, which is a brand-new policy for the  
3 Department, is going to have comments coming back from the  
4 parties and monitor tomorrow. And then we will have a  
5 meeting on July the 20<sup>th</sup>. And that meeting was  
6 rescheduled from earlier in the calendar because of a  
7 conflict, but that meeting will be on July the 20<sup>th</sup> where  
8 we'll have discussion with the parties and monitor. And the  
9 City, of course, will receive those comments and amend the  
10 draft policy accordingly.

16 And that's the update, Your Honor. And I stand  
17 for any questions you may have.

18 THE COURT: Thank you.

19 Cdr. Middleton, did you want to add anything?

20 CDR. MIDDLETON: I think the presentations have  
21 been going well. We had Dr. Cass ask us a question today  
22 about what we thought of the process. This is my first time  
23 going through a process like this, and a lot of people  
24 spoke, but the process, I think, is going well. We got  
25 input from -- from the CPSs. We got input from POB. We got

1 input from stakeholders. We took every comment and gave a  
2 good thorough review, and we actually added a lot of the  
3 comment that the public gave us into the policy. So I think  
4 the public and stakeholders will be happy with what they see  
5 as well.

6 THE COURT: Thank you, Commander.

7 Any comment from -- Mr. Mowrer, you got anything?

8 MR. MOWRER: No, sir. Thank you.

9 THE COURT: Ms. Martinez?

10 MS. MARTINEZ: Judge, I believe that the City and  
11 the police department have been terrific about the way they  
12 have included the community in this review process. And in  
13 particular, we greatly appreciate the fact that they have  
14 included the Police Oversight Board. As the Court is well  
15 aware, POB repeatedly appealed to the Court about the City's  
16 failure in the past to permit them to participate in the  
17 policy review process. And they were extremely concerned  
18 because it is part of their mandate under the ordinance that  
19 established that entity. And POB has had a very significant  
20 role in this process. And beyond that, the City and the  
21 police department have also given the POB a role in  
22 permitting them to use Police Oversight Board meetings as to  
23 a place for the community to review policies and come and  
24 express their views about policies as they are being  
25 reviewed and revised. So DOJ really commends their efforts

1 in this regard.

2 THE COURT: Well, thank you, Ms. Martinez. And  
3 I'm hearing a positive thread run through the entire meeting  
4 that the -- some of the renewed spirit of disclosure and  
5 making everything readily apparent to the community is  
6 carrying through. I appreciate the efforts of everyone  
7 involved, but I'm appreciating that this new spirit that we  
8 talked about with the mayor last fall seems to be driving a  
9 real renewed effort to comply. And I'm -- I appreciate  
10 everyone's involvement in that.

11 And welcome to Ms. Van Meter, again.

12 We've got a status conference set for  
13 August 9<sup>th</sup>. I'm not going to be available on that date.  
14 I'm going to check with Judge Vidmar to see if he could host  
15 the status party that day. And if he isn't, what we might  
16 consider doing is scheduling that meeting for later in  
17 August and maybe combine that and the September meeting.  
18 But we'll be back in touch about that after we communicate  
19 with Judge Vidmar.

20 Is there anything else I can help you with this  
21 morning?

22 MALE SPEAKER: Not from me, Your Honor.

23 MS. MARTINEZ: Your Honor, may I ask the Court to  
24 consider whether it might schedule a public hearing sometime  
25 in September? And the reason that I would ask the Court to

1 consider that is that on August 31<sup>st</sup>, we will have the  
2 second report that will be filed, the second interim report.  
3 That should be a more substantive report on both the  
4 technical assistance that has been provided, plus the  
5 Compliance Plan, whether or not the City has been able to  
6 follow through completely on the Compliance Plan. And we  
7 just ask that the Court consider whether it might be able to  
8 hold another public hearing after that report has been  
9 filed.

10 THE COURT: So I'm looking at the schedule, the  
11 proposed schedule that's laid out, and I didn't have another  
12 in-person status conference scheduled, I don't think, until  
13 November the 8<sup>th</sup>.

14 Dionna, are you on?

15 LAW CLERK: I am, sir.

16 THE COURT: I'll tell you what, if the parties  
17 jointly agree that an earlier and perhaps in addition  
18 in-person status conference is necessary in September, I'm  
19 willing to consider it. File some pleading alerting me to  
20 that, if you would like.

21 And anything else?

22 MS. MARTINEZ: Not on behalf of the United  
23 States, Your Honor. Thank you.

24 THE COURT: All right. Thanks very much.

25 Appreciate everyone's efforts and I'll hang up.

1 You-all have a great day.

2 (The proceedings concluded at 11:39 A.M.)

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1 UNITED STATES OF AMERICA  
2 DISTRICT OF NEW MEXICO

4 CERTIFICATE OF OFFICIAL REPORTER

5 I, Vanessa I. Alyce, RPR, NM CCR, and Federal Official  
6 Court Reporter in and for the United States District Court  
7 for the District of New Mexico, do hereby certify that  
8 pursuant to Section 753, Title 28, United States Code, that  
9 I did report in stenographic shorthand to the best of my  
10 skill and ability the foregoing pages 1-18 of the  
11 proceedings set forth herein, that the foregoing is a true  
12 and correct transcript of the stenographically recorded  
13 proceedings held in the above-entitled matter and that the  
14 transcript page format is in conformance with the  
15 regulations of the Judicial Conference of the United States.

17 Dated this 17<sup>th</sup> day of July 2018.

18

19 S/ Electronically Filed  
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